

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Ellen Gavin  
Marshall Johnson  
LeRoy Koppendrayer  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Northern  
States Power Company d/b/a Xcel Energy and  
Dairyland Power Cooperative for a Certificate  
of Need for a High Voltage Transmission Line

ISSUE DATE: December 24, 2002

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ORDER VARYING RULE AND  
EXTENDING TIME LINE FOR  
COMMISSION ACTION

**PROCEDURAL HISTORY**

Dairyland Power Cooperative (Dairyland) and Northern States Power Company d/b/a Xcel Energy (NSP) have declared their intent to seek a certificate of need to build a 115 kilovolt (kV) transmission line roughly from North Branch, Minnesota, to Taylor Falls, Minnesota, and a 161 kV line roughly from Taylor Falls to Amery, Wisconsin. The certificate of need process is governed by Minnesota Rules, parts 7849.0010 *et seq.*

On November 26, 2002, Dairyland and NSP petitioned for an exemption from Minnesota Rules part 7849.0270, subpart 2.B. and C. of the certificate of need rules.

On December 4, 2002, the Commission issued a Notice of Comment Periods, asking interested persons for comments on the Company's exemption requests. Under the terms of the notice, initial comments are due December 20, 2001 and reply comments January 3, 2003.

On December 19, 2002, the Commission met to consider extending the 30-day time period set by rule for acting on Dairyland's and NSP's request.<sup>1</sup> Commissioners Gavin and Reha recused themselves from this case. No party objected to extending the deadline for Commission action to ensure proper review of the exemption request.

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<sup>1</sup> Minn. Rules, part 7849.0200, subp. 6.

## **FINDINGS AND CONCLUSIONS**

### **I. The Certificate of Need, and the Exemption Request**

The term “large energy facility” includes any transmission line with a capacity of 100 kV or more with more than ten miles of its length in Minnesota or that crosses a state line.<sup>2</sup> To build a large energy facility in Minnesota, a person must first obtain a “certificate of need” by fulfilling requirements designed to demonstrate that the facility is needed.<sup>3</sup> At the Legislature’s direction,<sup>4</sup> rules were adopted establishing criteria for demonstrating need.<sup>5</sup> In particular, Minnesota Rules part 7849.0270, subpart 2.B. directs an applicant to forecast how much energy will be consumed by customers within the region to which the electricity would be transmitted, disaggregated into nine customer categories (residential, commercial, industrial, etc.). In addition, subpart 2.C. requires that this forecast identify how much electricity each customer category would consume each year during the period of maximum consumption.

Dairyland’s and NSP’s proposed transmission lines would each have a transmission capacity exceeding 100 kV, and one would cross the Minnesota-Wisconsin state line; therefore they qualify as large energy facilities. But Dairyland and NSP state that they do not have a basis for forecasting consumption and demand levels by customer categories within the regions served by the proposed lines. Consequently they have asked for an exemption from the requirements of Minnesota Rules part 7849.0270, subpart 2.B. and C., and propose offering substitute information instead.

Minnesota Rules provide for such exemption requests. But, as noted above, they also provide for the Commission to rule on the exemption requests within 30 days.<sup>6</sup> This 30-day deadline conflicts with the need to provide parties and the Commission with adequate time to review and comment on Dairyland’s and NSP’s request.

### **II. The Legal Standard for Variance**

The Commission’s rules of practice and procedure permit it to vary any of its rules upon making the following findings:

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<sup>2</sup> Minn. Stat. § 216B.2421, subd. 3.

<sup>3</sup> Minn. Stat. § 216B.243, subd. 2.

<sup>4</sup> *Id.*, subd. 1.

<sup>5</sup> Minnesota Rules, parts 7849.0010 *et seq.*

<sup>6</sup> Minn. Rules, part 7849.0200, subp. 6.

- (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) granting the variance would not adversely affect the public interest;
- (3) granting the variance would not conflict with standards imposed by law.<sup>7</sup>

### **III. Commission Action**

The Commission has reviewed the exemption petition and finds that careful consideration of the petition will require more than 30 days.

Dairyland and NSP seek exemption from two filing requirements. While it is important not to burden the companies with unnecessary or unperformable filing requirements, it is equally important not to forgo information that will be needed once the case begins. The Commission has solicited comments from interested persons to help it avoid both hazards. Receiving and analyzing those comments will require this petition to remain open for more than 30 days.

The Commission will therefore vary the 30-day time line of Minn. Rules, part 7849.0200, subp. 6, making the following findings:

- (1) Enforcing the 30-day time line would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission, by jeopardizing the thoroughness of the Commission's decision-making process;
- (2) Varying the 30-day time line would not adversely affect the public interest and would in fact serve the public interest by protecting the Commission's decision-making process;
- (3) Varying the 30-day time line would not conflict with any other standards imposed by law.

The Commission will promptly review the comments of the parties and will act on Dairyland's and NSP's exemption request as soon as practicable.

The Commission will so order.

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<sup>7</sup> Minn. Rules, part 7829.3200, subp. 1.

**ORDER**

1. Minn. Rules, part 7849.0200, subp. 6 is hereby varied to extend the time for Commission action on Dairyland's and NSP's exemption petition as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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